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Taxation -- Equal Protection -- Discrimination Against Foreign Corporations

partnership, it ought not be so considered for income tax purposes. Furthermore, the indenture in the present case does not conform to the rules of partnership in the state of Iowa.[21] Many courts hold validity under state law controlling although the Supreme Court has not as yet ruled on this particular point.[22] Much of the present conflict is attributed to the failure on the part of the various courts to properly analyze existing federal statutes. The court here does not feel that either the legislature or the Supreme Court ever intended to create a partnership for income tax purposes where none existed either under state law or under the Common Law.

At the present time there seems to be no hard and fast rule for determining whether a trust-partnership will be upheld for tax purposes or not. The cases are conflicting and as yet the Supreme Court has failed to hand down a definite ruling on this particular point. The instant case presents a well reasoned and exhaustive opinion which, if followed, will go far in clearing up the present trust-partnership controversy.

TAXATION — EQUAL PROTECTION — DISCRIMINATION AGAINST FOREIGN CORPORATIONS

Under a Michigan statute[1] a tax was assessed against plaintiff, an Ohio corporation doing business in Michigan as a foreign corporation, on intangible assets that were acquired from the doing of business in Michigan and removed from the state before the statute was passed, but had neither been physically present nor invested in Michigan since. The statute contained an exemption for intangible property owned by a domiciliary of Michigan that was situated in a foreign state and taxed by that state. Plaintiff owned and operated some mines in Michigan, but its executive offices and other assets were situated in other states. Plaintiff paid the tax under protest and sued for a refund. *Held*, for Plaintiff on grounds that such an application of the statute is unconstitutional under the Fourteenth Amendment to the Constitution. *Cleveland-Cliffs Iron Co. v. Michigan*, 45 N.W.2d 46 (Mich. 1950).

A state is not bound to admit foreign corporations,[2] and it won't be considered as a denial of "equal protection"[3] if the state does refuse to admit them[4] or puts onerous conditions on admission.[5] But once a foreign corporation has been domesticated, having fulfilled all conditions precedent

21. Hanson v. Birmingham, 92 F. Supp. 33 (N.D. Iowa 1950).
22. Zander v. Comm'r, 173 F.2d 624 (5th Cir. 1949); Comm'r v. Tenny, 120 F.2d 421 (1st Cir. 1941).

1. MICH. STAT. ANN. §§ 7.556(1), 7.556(12).
2. Paul v. Virginia, 8 Wall 168 (U.S. 1868).
3. U.S. CONST. AMEND. XIV, § 1.
4. Paul v. Virginia, *supra* note 2.
5. Lincoln Nat. Life Ins. Co. v. Read, 325 U.S. 673 (1945); Montgomery Ward & Co. v. Warner, 312 Mich. 117, 20 N.W.2d 127 (1945).

and paid all then existing taxes, it is entitled to "equal protection" with domestic corporations.[6] The "equal protection" clause limits the power of the states to classify between domestic and domesticated foreign corporations for taxation purposes.[7] A classification which leads to an unequal tax burden can be justified under this clause only if it is in the public interest[8] and is reasonable.[9] An unreasonable classification constitutes a denial of "equal protection."[10] An ad valorem tax on intangibles which discriminates between domestic and domesticated foreign corporations is an unreasonable classification.[11]

The recent case, *Wheeling Steel Corp. v. Glander*,[12] *is the leading* case on this subject. It concerned an Ohio statute[13] which was construed to tax, in this instance, intangible property, situated in West Virginia, of a West Virginia corporation doing business in Ohio. The statute as construed by Ohio courts would exempt the same property similarly situated if owned by an Ohio corporation. The Court said that such an application of the statute denies "equal protection" and set up the following test: If the same asset in the same place is taxed to the domesticated foreign corporation and exempt to the domestic corporation, the tax is unconstitutional as a denial of "equal protection."[14]

In the instant case[15] the Court has applied the test as set out in the foregoing paragraph to the facts of this case with the result that this application of the tax statute is unconstitutional. However, the opinion is unclear in that there seems to be some doubt as to whether part of the statute itself is unconstitutional or merely this application of the statute.

There have not been many cases on this point, and this case together with the *Wheeling*[16] case has converted the foregoing test into a settled doctrine which will be a measuring stick for future cases. The test itself is unusual in that it doesn't follow the usual circuitous route of legal reasoning, but sets down a simple easy-to-follow rule which can be understood by laymen; and the results of its application are equitable. There is room for more of this in the law.

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6. Power Mfg. Co. v. Saunders, 274 U.S. 490 (1927); Southern Ry. v. Greene, 216 U.S. 400 (1910).

7. ROTTSCHAEFFER, CONSTITUTIONAL LAW 664 (1939).

8. Methodist Book Concern v. Galloway, 186 Ore. 585, 208 P.2d 319 (1949); Miller v. Lamar Ins. Co., 158 Miss. 753, 131 So. 282 (1930).

9. Northwestern Mut. Life Ins. Co. v. Wisconsin, 247 U.S. 132 (1918); Miller v. Lamar Ins. Co., *supra* note 8.

10. Airway Elec. Appliance Corp. v. Day, 266 U.S. 71 (1924).

11. Hanover Fire Ins. Co. v. Harding, 272 U.S. 474 (1926).

12. 337 U.S. 562 (1949).

13. OHIO GEN. CODE ANN. §§ 5328-1, 5328-2 (1943).

14. *See* Wheeling Steel Corp v. Glander, *supra* note 12, at 572.

15. Cleveland-Cliffs Iron Co. v. Michigan, 45 N.W.2d 46 (Mich. 1950).

16. *Id.* at 56.